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JAMES H. McKENNEY,
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In the Supreme Court of the United States.

OCTOBER TERM, 1902.

NORTHERN PACIFIC RAILWAY COMPANY, appellant,
v.
J. A. SODERBERG, APPELLEE.

No. 61.

SUPPLEMENTAL BRIEF ON BEHALF OF THE UNITED STATES.

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Since this case was argued, and since the briefs of counsel were filed, there has come from the press an extended work on the subject of mines and mining claims, by Wilson I. Snyder, of the Utah bar. The principles announced in this work, in so far as applicable to the question of law involved in this case, sustain the contention of counsel for the Government.

The attention of the court is specially called to volume 1, section 143, wherein the author, among other things, says:

> The term "minerals," standing alone, and as understood in mining law, generally compre-

> hends and includes all the substances in the earth's crust which are sought for and removed by man for the substance itself. In the early decisions in England there seems to have been a disposition to use, in grants and reservations of the right to mine minerals, the comprehensive and general expression, "all mines and minerals." As was said by Baron Parke in a leading case, "The term 'minerals' here used, though more frequently applied to substances containing metals, in its proper sense includes all fossil bodies or matters dug out of mines; and Dr. Johnson says that 'all metals are minerals, but all minerals are not metals;' and mines, according to Jacobs's Law Dictionary, are 'quarries or places where anything is digged;' and in the Yearbook, 17 Edw. III, chapter 7, '*Mineræ d'Pierre*' and '*De Charbon*' are spoken of. Beds of stone, which may be dug by winning or qarrying, are therefore properly minerals, and so we think they must be held to be in the clause in question." This definition has been practically followed in England in a greater number of cases.

On the same subject the court's attention is also called to sections 134, 140, 144, 145, and 148 of the same volume, and to section 926 of volume 2 of said work.

On the question of the meaning of section 2329 of the Revised Statutes, providing for the location, entry, and patent of "claims usually called 'placers,' including all forms of deposit excepting veins of quartz or

other rock in place," the attention of the court is called to sections 307 to 314, inclusive, of volume 1.

Respectfully submitted.

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